

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANTS

Benton County Remonstrators:

**JOHN T. CASEY**

Rensselaer, Indiana

ATTORNEYS FOR APPELLEES:

Benton County Board of Zoning Appeals:

**JUDSON G. BARCE**

**HUNTER J. REECE**

Barce & Barce, P.C.

Fowler, Indiana

Benton County Intervenors:

**BRYAN H. BABB**

**MARISOL SANCHEZ**

**DANIEL P. McINERY**

Bose McKinney & Evans LLP

Indianapolis, Indiana

**JOHN A. LARSON**

Williamsport, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

IN RE: THE MATTER OF THE )  
MEMBERSHIP OF THE BENTON )  
COUNTY BOARD OF ZONING )  
APPEALS FOR THE PURPOSES OF )  
DETERMINING THE APPLICATION )  
FOR SPECIAL EXCEPTION FILED )  
NORTH FORK FARMS, LLC. )

No. 04A03-0711-CV-531

---

APPEAL FROM THE BENTON CIRCUIT COURT  
The Honorable Robert M. Hall, Special Judge  
Cause No. 04C01-0704-PL-69

---

**May 23, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

The Benton County Board of Zoning Appeals (“BZA”) filed a complaint for declaratory judgment in Benton Circuit Court. David Geswein and Dennis Foster, (“Remonstrators”), intervenors in the declaratory judgment complaint, appeal the determination of the trial court. Remonstrators appeal. We raise sua sponte the following issue of whether the trial court erred in granting request for a declaratory judgment.<sup>1</sup> We reverse and remand for proceedings consistent with this opinion.

### **Facts and Procedural History**

The Benton County BZA is a five-member board that is responsible for conducting hearings and voting to approve or disapprove special exceptions to the Benton County Zoning Code. The regular members of the BZA are Ronald J. Gick, Mark Flook, Joan Wealing, Gary Clifton, and Gary Gretencord. These members were appointed pursuant to Indiana Code section 36-7-4-902 (2004).

In early December 2006, North Fork Farms LLC (“North Fork”) filed an application with Indiana Department of Environmental Management (“IDEM”) to develop a confined animal feeding operation (“CAFO”). Prior to this, the Buchanan family had entered into an agreement to sell real estate they owned in Benton County, to North Fork contingent on zoning and IDEM approval, for the purpose of building the CAFO. Shortly after this filing, North Fork made arrangements with the Buchanan

---

<sup>1</sup> The Remonstrators raised four issues, which we consolidate and restates as follows:

- I. Whether the BZA has the jurisdiction, authority, or power to determine and resolve individual member’s conflict of interest.
- II. Whether any member of the BZA has a conflict of interest.
- III. Whether an interested party may engage in pre-application communications with BZA members about matters that will come before the BZA.

family to hold a public meeting and dinner to introduce North Fork to the Benton County community and to provide basic information regarding the proposed CAFO.

A pork barbeque dinner arranged by the Buchanan family took place on December 18, 2006, after North Fork had applied for IDEM approval but before receiving that approval and before filing an application with the BZA. Gary Gretencord, who was hired and paid by the Buchanan family, catered the dinner. He did not know at the time that North Fork reimbursed the Buchanan family for the costs of the dinner. North Fork sent invitations to all BZA members, the county commissioners, the Boswell Town Board members, and many neighboring landowners, including some of the remonstrators. During the dinner, North Fork presented basic information on the building of a CAFO. While some BZA members acknowledged speaking with representatives and each other at the meeting, they could not remember any specific discussions. All BZA members attended the Buchanan family meeting.

In late February 2007, North Fork filed an application with the BZA for special exceptions to the project. The BZA scheduled a public meeting for April 3, 2007. At this meeting, the BZA addressed conflicts of interest among the members but did not address the merits of the application. To address potential conflicts, the BZA established a procedure that consisted of having each member answer eight questions. Then the other members would vote on whether the member had a conflict and should be disqualified from considering North Fork's application. The BZA followed this procedure and disqualified Gary Clifton because his wife and son signed the remonstrance petition regarding the North Fork application and his family owned real estate near the proposed

site of the project. Mark Flook subsequently disqualified himself because his brother and sister-in-law signed the remonstrance petition.

The BZA determined that the other members did not have any conflict of interest. Ronald Gick is a seed corn sales manager. He oversees the sale of approximately 30,000 bags of seed corn per year in his area. He sold approximately 100 bags of seed corn to the Buchanan family. Gary Gretencord was paid by the Buchanan family to cater the meeting where North Fork was introduced to the community. North Fork reimbursed the Buchanan family for this payment.

The BZA determined that these connections did not constitute conflicts of interest. After the disqualifications, Rusty Garrison and Steve Gick were appointed to fill the vacancies by the appropriate appointing authority, not the BZA.

On April 17, 2007, the BZA filed a complaint for declaratory judgment with Benton Circuit Court to review the conflict of interest issue, the validity of the BZA procedure for determining and dealing with conflicts of interest, and any violation of the Open Door Law. A hearing was held on July 2, 2007. On October 2, 2007, the trial court entered its Findings of Fact and Conclusions of Law that approved and confirmed the actions of the BZA. The Remonstrators appeal.

### **Discussion and Decision**

Pursuant to the Uniform Declaratory Act (“the Act”), declaratory orders, judgments and decrees have the force and effect of final judgments and are reviewed as any other order, judgment or decree. Ind. Code § 34-14-1-1 (1999). The purpose of a declaratory judgment is to provide stability and reduce uncertainty and insecurity with

regard to rights, status, and other legal relations. Ind. Code § 34-14-1-12 (1999). This statute is to be “liberally construed and administered.” Id.

Before a declaratory judgment may be entered, the party seeking such a judgment must show that they have standing under the Act to seek such relief. Thus, the BZA must put before the trial court a justiciable controversy.

[T]he person bringing the action must have a substantial present interest in the relief sought, such as there must exist not merely a theoretical question or controversy but a real or actual controversy, or at least the ripening seeds of such a controversy, and that a question has arisen affecting such right which ought to be decided in order to safeguard such right.

Zoercher v. Agler, 202 Ind. 214, 172 N.E. 186, 189 (1930).

A justiciable controversy requires an “interested party” who is asserting “adverse” claims, which are “substantial” and worthy of judicial relief. City of Hammond v. Board of Zoning Appeals, 152 Ind. App. 480, 490-91, 284 N.E.2d 119, 126-27 (1972). The interested party must show that “his rights are in issue or jeopardy” and must provide facts that are “sufficiently complete, mature, proximate, and ripe to place him in gear with his adversary.” Id.

In this case, there was and is no substantial present interest in the relief sought. The BZA merely sought the trial court’s answer to eight different questions proffered in their complaint. The parties must show that their “rights, status, or other legal relations” will be “directly affected.” The Remonstrators may have a hypothetical controversy, i.e. if the BZA members have conflicts of interest that would prevent them from impartially considering the North Fork application and that application is approved. Alternatively,

the BZA could deny North Fork's application and the Remonstrators would have no actual controversy.

While the BZA's attempt to ward off any question regarding conflicts of interest is laudable, the attempt was premature. The BZA and the Remonstrators failed to show that an actual, justiciable controversy existed at the time they requested a declaratory judgment. Therefore, the trial court should have denied the BZA's request for a declaratory judgment. Because the declaratory judgment was premature, we reverse and remand with instruction to dismiss the declaratory judgment.

MAY, J., and VAIDIK, J., concur.